

Complaint Report (CCRB)

| | | | |
|-------------------------------------|--|--------------------------|------------------------|
| CCRB Case No : | 200702457 | C/V Report Date : | Tue, 02/20/2007 |
| Complaint Type : | CCRB | Investigator : | Christopher Vredenburg |
| Complaint Made At : | CCRB | Ref. No | |
| Received Date (CCRB) : | Tue, 02/20/2007 | Mode : | Call Processing System |
| Incident Date(s) : | Tuesday, 02/20/2007 9:40 PM | | |
| Place of Occurrence: | [REDACTED] | Precinct: | 120 |
| Location : | Street/highway | Boro: | Staten Island |
| Reason for Initial Contact : | PD suspected C/V of violation/crime - street | | |
| Charges: | No arrest made or summons issued | | |

Complainant/Victim Details

| | | | |
|--------------------------|-----------------------|---|-------------|
| Name: | [REDACTED] | Type: | Comp/Victim |
| Address: | [REDACTED] | | |
| Contacts: | [REDACTED] | [REDACTED] | |
| | [REDACTED] | [REDACTED] | |
| | [REDACTED] | | |
| Gender: | [REDACTED] | Ethnicity: | [REDACTED] |
| Person Assisting: | | Date of Birth: | [REDACTED] |
| Injury Details: | <u>Type of Injury</u> | <u>Description</u> | |
| | Bruise | Mr. § 87(2)(b) sustained a bruise to his back right shoulder. | |

| | | | |
|--------------------------|------------|-----------------------|------------|
| Name: | [REDACTED] | Type: | Victim |
| Address: | [REDACTED] | | |
| Contacts: | [REDACTED] | [REDACTED] | |
| | [REDACTED] | [REDACTED] | |
| | [REDACTED] | | |
| Gender: | [REDACTED] | Ethnicity: | [REDACTED] |
| Person Assisting: | | Date of Birth: | [REDACTED] |

Officer(s) Named in Complaint

| Rank | Officer | S/W Officer | Tax No | Race | Cmd | Allegations/Board Dispositions |
|------|----------------|-----------------|--------|----------|-----|---|
| POM | James Pedro | Subject Officer | 937259 | Black | 120 | Refusal to provide name/shield number - (A) Unsubstantiated |
| POF | Jessica Nieves | Subject Officer | 933098 | Hispanic | 120 | Refusal to provide name/shield number - (A) Unsubstantiated |

| | | | | | | |
|-----|--------------------|-----------------|--------|----------|-----|---|
| POM | Manuel Sepulveda | Subject Officer | 929157 | Hispanic | 120 | Refusal to provide name/shield number - (A) Unsubstantiated |
| | An officer | Subject Officer | | | 120 | Word - (D) Officer(s) Unidentified |
| SGT | Robert Warshefskie | Subject Officer | 894998 | White | 120 | Question and/or stop - (A) Unsubstantiated |
| SGT | Robert Warshefskie | Subject Officer | 894998 | White | 120 | Refusal to provide name/shield number - (A) Unsubstantiated |
| SGT | Robert Warshefskie | Subject Officer | 894998 | White | 120 | Frisk - (A) Unsubstantiated |
| SGT | Robert Warshefskie | Subject Officer | 894998 | White | 120 | Search (of person) - (A) Unsubstantiated |
| POM | Jerome McGraw | Subject Officer | 925714 | Black | 120 | Refusal to provide name/shield number - (A) Unsubstantiated |
| POM | Jerome McGraw | Subject Officer | 925714 | Black | 120 | Frisk - (A) Exonerated |
| POM | Jerome McGraw | Subject Officer | 925714 | Black | 120 | Search (of person) - (A) Unsubstantiated |
| POM | Richard Ortiz | Witness Officer | 928905 | Hispanic | 120 | |

Initial Complaint Narrative

§ 87(2)(b) and § 87(2)(b) were stopped near the intersection of Bay Street and Water Street in Staten Island. § 87(2)(b) said that he and § 87(2)(b) were walking towards a grocery store when five plainclothes officers, one female and four males, exited a navy blue or black van and all five of the officers were involved in pushing both men against a wall. As they approached the men, one of the officers showed his shield to alert the men that they were police officers. § 87(2)(b) alleged that both he and § 87(2)(b) were searched without any probable cause. § 87(2)(b) asked for identification and some of the officers "flashed" their badges without identifying themselves. When § 87(2)(b) asked for shield numbers or other identifying information, the officers did not provide it. The officers asked § 87(2)(b), § 87(2)(a) CVR § 50-b

§ 87(2)(b) estimated that the stop lasted five minutes. A marked van passed by during the interaction and after being searched § 87(2)(b) asked those officers about the incident and an officer informed that the officers who had searched § 87(2)(b) and § 87(2)(b) were from the 120th Precinct. In being searched, § 87(2)(b) was able to see the shield number of one officer, 5218, which was inside of his jacket and was not provided willingly. He described the officer as weighing about 170 pounds, 5'8", possibly Hispanic. § 87(2)(b) also asked the officers for some sort of business card, but the officers said they didn't have business cards and didn't respond to a request for their names. A female officer was also involved and § 87(2)(b) said that he could not describe all of them and was humiliated and embarrassed by the incident. § 87(2)(b) noticed that the officers had shields around their neck, but was not shown the identifying information. § 87(2)(b) said that he was bruised on his elbow from being pushed against the wall, saying that he was not physically injured, but said he was emotionally distressed. He said that he would see a medical doctor the next day. § 87(2)(b) said that he was a law abiding citizen who wanted to be an officer. He said that both he and § 87(2)(b) cooperated with the officers. No reason was provided for the stop.

Witness

CCRB INVESTIGATIVE RECOMMENDATION

| | | | | | |
|---|--|--|--|---|--|
| Investigator: Christopher Vredenburg | Team: Team # 5 | CCRB Case #: 200702457 | <input type="checkbox"/> Force | <input checked="" type="checkbox"/> Discourt. | <input type="checkbox"/> U.S. |
| | | | <input checked="" type="checkbox"/> Abuse | <input type="checkbox"/> O.L. | <input checked="" type="checkbox"/> Injury |
| Incident Date(s) Tuesday, 02/20/2007 9:40 PM | Location of Incident: Intersection of Bay Street and Water Street | Precinct: 120 | 18 Mo. SOL 8/20/2008 | EO SOL 8/20/2008 | |
| Date/Time CV Reported Tue, 02/20/2007 10:16 PM | CV Reported At: CCRB | How CV Reported: Call Processing System | Date/Time Received at CCRB Tue, 02/20/2007 10:16 PM | | |

| Complainant/Victim | Type | Home Address |
|--------------------|------|--------------|
| | | |
| | | |

| Subject Officer(s) | Shield | TaxID | Command |
|---------------------------|--------|--------|---------|
| 1. SGT Robert Warshefskie | 05218 | 894998 | 120 PCT |
| 2. POM Jerome McGraw | 25072 | 925714 | 120 PCT |
| 3. POM James Pedro | 08628 | 937259 | 120 PCT |
| 4. POF Jessica Nieves | 31320 | 933098 | 120 PCT |
| 5. POM Manuel Sepulveda | 16172 | 929157 | 120 PCT |
| 6. An officer | | | 120 PCT |

| Witness Officer(s) | Shield No | Tax No | Cmd Name |
|----------------------|-----------|--------|----------|
| 1. POM Richard Ortiz | 17669 | 928905 | 120 PCT |

| Officer(s) | Allegation | Investigator Recommendation |
|--------------------------|---|-----------------------------|
| A.SGT Robert Warshefskie | Abuse: Sergeant Robert Warshefskie supervised the stop of § 87(2)(b) and § 87(2)(b) | |
| B.SGT Robert Warshefskie | Abuse: Sergeant Robert Warshefskie refused to provide his name and/or shield number to § 87(2)(b) | |
| C.POF Jessica Nieves | Abuse: Officer Jessica Nieves refused to provide her name and/or shield number to § 87(2)(b) | |
| D.POM James Pedro | Abuse: Officer James Pedro refused to provide his name and/or shield number to § 87(2)(b) | |
| E.SGT Robert Warshefskie | Abuse: Sergeant Robert Warshefskie frisked § 87(2)(b) | |
| F.SGT Robert Warshefskie | Abuse: Sergeant Robert Warshefskie searched § 87(2)(b) | |
| G.POM Manuel Sepulveda | Abuse: Officer Manuel Sepulveda refused to provide his name and/or shield number to § 87(2)(b) and § 87(2)(b) | |
| H.POM Jerome McGraw | Abuse: Officer Jerome McGraw refused to provide his name and/or shield number to § 87(2)(b) and § 87(2)(b) | |
| I.POM Jerome McGraw | Abuse: Officer Jerome McGraw frisked § 87(2)(b) | |
| J.POM Jerome McGraw | Abuse: Officer Jerome McGraw searched § 87(2)(b) | |
| K. An officer | Discourtesy: An officer spoke obscenely and/or rudely to § 87(2)(b) | |

| Officer(s) | Allegation | Investigator Recommendation |
|-----------------------|------------|-----------------------------|
| § 87(4-b), § 87(2)(g) | | |

Synopsis

§ 87(2)(b) filed this complaint with the CCRB by phone on February 20, 2007. On February 20, 2007, at 9:40 PM, § 87(2)(b) and his roommate, § 87(2)(b) were walking on Bay Street near the intersection with Water Street in Staten Island. Five officers, identified during the investigation as Sergeant Robert Warshefskie, Officer Jerome McGraw, Officer Manuel Sepulveda, Officer James Pedro, and Officer Jessica Nieves, exited an unmarked blue van and walked towards § 87(2)(b) and § 87(2)(b). Sergeant Warshefskie, Officer Nieves, and Officer Pedro approached § 87(2)(b) while Officer McGraw and Officer Sepulveda approached § 87(2)(b) (allegation A). § 87(2)(b) asked Sergeant Warshefskie, Officer Pedro, and Officer Nieves for identification information and Sergeant Warshefskie told § 87(2)(b) that they did not need to provide that information (allegations B, C, and D). Sergeant Warshefskie frisked § 87(2)(b) (allegation E) and then searched his jacket and pants pockets and removed § 87(2)(b)'s wallet (allegation F). § 87(2)(b) asked Officer McGraw and Officer Sepulveda for their names and shield numbers and they did not reply to the question (allegations G and H). Officer McGraw unzipped § 87(2)(b)'s jacket and frisked his upper body and then searched his jacket and pants pockets (allegations I and J), removing § 87(2)(b)'s wallet from his pants pockets and looking through the wallet. After § 87(2)(b) asked the officers if they were stopping him because he fit a description, an unidentified officer said, "Are you trying to be a smart ass?" (allegation K). Sergeant Warshefskie did not prepare a stop and frisk report in regards to stopping § 87(2)(b) (allegation L).

§ 87(2)(b), § 87(2)(g), § 87(4-b)

Summary of Complaint

§ 87(2)(b) a § 87(2)(b) made statements concerning the incident in filing the complaint (encl. 10a-b), in a telephone conversation with Inv. Vredenburg on February 23, 2007 (encl. 11a), and in his CCRB interview on March 7, 2007 (encl. 14a-g). § 87(2)(b), § 87(2)(g)

On February 20, 2007, at about 9:40 PM, § 87(2)(b) and his roommate, § 87(2)(b) left their apartment located at § 87(2)(b) and walked on Bay Street towards a convenience store. Bay Street is a commercial street, but the stores were closed and no one was on the street. § 87(2)(b) was wearing a black jacket, jeans, a colorful necklace shaped like the continent of Africa, and did not know if he was wearing a hat. § 87(2)(b) had his wallet in his back left pants pocket, a work identification card in his left outside jacket pocket, and his cell phone. He did not have any other items on his person. He and § 87(2)(b) were walking a few feet from one another and did not stop to speak with anyone or exchange any items or make physical contact with one another. § 87(2)(b) was speaking on his cell phone. About two minutes after leaving their apartment, a black or dark blue unmarked police van stopped behind § 87(2)(b) and § 87(2)(b) and five officers dressed in plain

clothes, identified as Sergeant Robert Warshefskie, Officer Manuel Sepulveda, Officer Jessica Nieves, Officer Jerome McGraw, and Officer James Pedro, exited the van and walked towards § 87(2)(b) and § 87(2)(b) described Officer Nieves as a 5'2" to 5'3", 135 pound white or Hispanic female, Officer Pedro as a white or Hispanic male, 176 to 180 pounds, 5'9", and in his late thirties, and Sergeant Warshefskie as a white or Hispanic male, 5'7", 160-170 pounds, in his late twenties to early thirties, and with shield number 5218. He could not described Officer McGraw or Officer Sepulveda. § 87(2)(b) ended his phone call and Sergeant Warshefskie, Officer Pedro, and Officer Nieves approached § 87(2)(b) and Officer McGraw and Officer Sepulveda approached § 87(2)(b). The officers all identified themselves as police officers and § 87(2)(b) asked Sergeant Warshefskie, Officer Nieves, and Officer Pedro, "Can I please see some form of identification?" None of the officers had their shields displayed, stated their name or shield number, or showed § 87(2)(b) their shields.

Sergeant Warshefskie told § 87(2)(b) that he did not have to provide his shield number and pushed § 87(2)(b) on his chest against the wall of a nearby building, causing a bruise to § 87(2)(b)'s right back shoulder. As this occurred, § 87(2)(b) read the shield number, 5218, which was positioned inside of Sergeant Warshefskie's jacket, but he could not read the name on the shield. Officer Nieves and Officer Pedro did not respond to his request. Officer Pedro stood to the side of § 87(2)(b) and did not physically interact with him. § 87(2)(b)'s jacket was unzipped and Sergeant Warshefskie patted down § 87(2)(b)'s upper body and then his legs down to § 87(2)(b)'s knees. § 87(2)(b) told Sergeant Warshefskie that he wanted to know why he was being stopped and that he had not done anything wrong. Sergeant Warshefskie and Officer Pedro told § 87(2)(b) not to speak. He was not sure if Sergeant Warshefskie put his hands in the two inside jacket pockets, but said that Sergeant Warshefskie did put his hands in both of the outside jacket pockets. Sergeant Warshefskie then put his hands in § 87(2)(b)'s four pants pockets, removing his wallet from the back left pants pocket and looked through the contents, which were a business card for a professor and thirteen to fourteen dollars. Sergeant Warshefskie removed the business card, which notes that the professor was once an NYPD police officer, and then put it back in and returned the wallet. § 87(2)(b) repeatedly asked Sergeant Warshefskie and Officer Pedro for identification during the search, but they did not provide it. Sergeant Warshefskie reached for § 87(2)(b)'s pants and § 87(2)(b) said that he did not have any briefs or boxers on, but that he would take off his clothing if Sergeant Warshefskie provided a reason for the search. Sergeant Warshefskie did not respond and put his hands on the inside of § 87(2)(b)'s pants and felt around his waist, asking § 87(2)(b) where he had drugs and weapons, and § 87(2)(b) answered that he did not have any. § 87(2)(b) stated, "Let me guess, I fit the description of a suspect." One officer, but not Sergeant Warshefskie, said, "Are you trying to be a smart ass?" § 87(2)(b) did not see the officer who made this comment and therefore could not describe the subject officer.

While being searched, § 87(2)(b) was unable to see all of what was happening with § 87(2)(b) but heard § 87(2)(b) ask the officers for identification and a reason for why they were being stopped. Also, § 87(2)(b) saw a male officer, who he could not further describe, pat down § 87(2)(b)'s upper body and pants and put his hands in his pants pockets. Sergeant Warshefskie finished searching § 87(2)(b) and he saw either Officer McGraw or Officer Sepulveda with § 87(2)(b)'s wallet and the other officer looking at a small object that § 87(2)(b) obtained from Africa and is a form of protection. § 87(2)(b) told the officers that he was not responsible for any harm that may come to them from handling the object. He did not see § 87(2)(b)'s pants fall to the ground.

The officers returned § 87(2)(b)'s wallet and § 87(2)(b) asked them as a group, "Can I know what precinct you're from or some form of identification because I'm going to file a police case?" The officers told him he could file a complaint, got into the van, and drove away. A marked police van drove by the scene during the stop and returned as the unmarked van left. § 87(2)(b) spoke with an unidentified female officer sitting in the passenger seat, who said that the officers with whom § 87(2)(b) and § 87(2)(b) had interacted were from the 120th Precinct.

§ 87(2)(b) was not aware of any crimes that either he or § 87(2)(b) had committed or were committing. At no point did any of the officers provide identification information. § 87(2)(b) felt pain in his back right shoulder later in the night and treated it by applying BenGay to his shoulder. He did not seek medical attention. He was not aware of any civilian witnesses.

There were a few inconsistencies amongst § 87(2)(b)'s statements. In filing the complaint, § 87(2)(b) stated that one of the officers "flashed" his shield in approaching them, but did not keep the shield displayed. He did not mention this in his two subsequent statements. Also in his initial

statement, § 87(2)(b) stated that one of the officers asked him to take off his pants and subsequently put his hands inside of § 87(2)(b)'s pants and felt around his boxers, which § 87(2)(b) described as a strip search. In his two subsequent statements, § 87(2)(b) said that he was not wearing any briefs or boxers and Sergeant Warshefskie did not extend his hands below the waistline. Also, § 87(2)(b) stated one of his elbows was bruised and that he planned to seek medical attention the next day, which he did not repeat in his subsequent statements. In filing the complaint § 87(2)(b) did not state that any officers said "smart ass" during the incident or describe the frisk, which § 87(2)(b) mentioned in both of his subsequent statements.

On June 5, 12, and 15, 2007, Inv. Vredenburg sent please call letters to § 87(2)(b) and § 87(2)(b) to view photo arrays of the officers. The home phone number was no longer functioning. Inv. Vredenburg called § 87(2)(b) on June 13, 2007, but he said that he had moved to Virginia to attend another college, did not have a steady school address, would not be able to come to New York City to view photos, and § 87(2)(b) was still living at the same address. § 87(2)(b) did not respond to the letters.

Results of Investigation

§ 87(2)(b) a § 87(2)(b), made statements concerning the incident in a telephone conversation with Inv. Vredenburg on February 28, 2007 (encl. 12a) and in his CCRB interview at the CCRB on March 7, 2007 (encl. 13a-f). § 87(2)(g)

On February 20, 2007, at about 9:40 PM, § 87(2)(b) and § 87(2)(b) left their residence located at § 87(2)(b) on their way to buy food at a convenience store. They were walking on Bay Street towards Water Street and didn't make any physical contact with one another, exchange any items with anyone, and wasn't speaking much with § 87(2)(b) who was a few feet away from § 87(2)(b). § 87(2)(b) had his wallet in his right back pants pocket and his keys in his right front pants pocket, but did not have any other items on his person. He was wearing a brown jacket with basketball team symbols on it, jeans with a belt, and a Yankees baseball hat.

A blue or black unmarked police van stopped behind § 87(2)(b) and § 87(2)(b) and five plain clothed officers, identified during the investigation as Sergeant Robert Warshefskie, Officer Manuel Sepulveda, Officer Jessica Nieves, Officer Jerome McGraw, and Officer James Pedro exited the van and walked towards § 87(2)(b) and § 87(2)(b). The officers told § 87(2)(b) that they were police officers, but did not have their shields displayed. Officer McGraw and Officer Sepulveda approached § 87(2)(b) while Sergeant Warshefskie and Officer Pedro approached § 87(2)(b) and Officer Nieves stood between them. § 87(2)(b) described Officer McGraw as a thirty year old light skinned black male who is about 5'9" to 6'0" tall, Officer Sepulveda as a thin white male who is about 5'4", and Officer Nieves as a slim white or Hispanic female in her early twenties who is about 5'1". He could not provide detailed descriptions of Sergeant Warshefskie and Officer Pedro. § 87(2)(b) asked Officer McGraw and Officer Sepulveda why he was being stopped and they told him that they did not need to answer that question. § 87(2)(b) asked Officer McGraw and Officer Sepulveda for their names, but they did not answer the question and asked § 87(2)(b) if he had any weapons. § 87(2)(b) responded that he did not.

Officer McGraw and Officer Sepulveda pushed § 87(2)(b) on his shoulders about a foot and a half towards a wall of a closed store. Officer McGraw positioned himself in front of § 87(2)(b) and Officer Sepulveda stood between § 87(2)(b) and § 87(2)(b) who was about one and a half yards away. § 87(2)(b) asked the officers what they wanted and Officer McGraw unzipped § 87(2)(b)'s jacket, patted down § 87(2)(b)'s upper body, and put his hands in the two outside jacket pockets, but there were no items in the jacket pockets. Officer McGraw patted down § 87(2)(b)'s lower body and pants as well. § 87(2)(b)'s shirt was tucked into his pants, which were very loosely held by a belt, and Officer McGraw untucked the shirt and felt § 87(2)(b)'s waist line, causing § 87(2)(b)'s pants to fall to the ground and displaying his undergarments. § 87(2)(b) bent down to pick up his pants and Officer Sepulveda pushed § 87(2)(b) on his shoulders back to the wall. Before lifting § 87(2)(b)'s pants to his waist line, Officer McGraw patted down § 87(2)(b)'s underpants and did not touch his genitals. § 87(2)(b) estimated that his pants were down for about one minute. Officer McGraw put his hands in § 87(2)(b)'s socks, felt his shoes, and removed § 87(2)(b)'s hat and looked within it, but there were no items in § 87(2)(b)'s socks, shoes, or hat. Officer McGraw removed § 87(2)(b)'s license from § 87(2)(b)'s

right front pants pocket and looked through the items, which consisted of credit cards, business cards, his license, and some cash. He removed § 87(2)(b)'s car keys and put them on a nearby window sill. In looking through § 87(2)(b)'s wallet, Officer McGraw also removed a clear bag that is about one inch to one and a half inches long and wide and is filled with a beige grain-like substance. § 87(2)(b) stated that the substance protects him and he obtained it from Africa. Officer Sepulveda told § 87(2)(b) to turn around as the officers held his wallet and the substance. § 87(2)(b) said that the left side of his body was "shaking" during the incident because he was fearful of the officers. Officer McGraw and Officer Sepulveda discussed burning the substance. The officers then returned § 87(2)(b)'s wallet to him, got into the van, and drove away.

A marked van drove by directly afterwards and § 87(2)(b) spoke with a female officer in the van about the interaction. She told § 87(2)(b) that the officers were from the 120th Precinct and that they could file a complaint about the incident.

§ 87(2)(b) said that he could not describe the officers who interacted with § 87(2)(b) or describe the interaction, as his attention was on Officer Pedro and Officer McGraw. He estimated that the stop lasted about five minutes. § 87(2)(b) has a very strong accent that made it difficult to understand his English.

In the telephone conversation with Inv. Vredenburg, § 87(2)(b) noted that Officer McGraw and Officer Sepulveda repeatedly told him to remove his hands from his jacket and that one of the officers grabbed his hands and took them out of his jacket pockets. He did not mention this in his CCRB interview.

On June 5, 12, and 15, 2007, Inv. Vredenburg sent please call letters to § 87(2)(b) and § 87(2)(b) to view photo arrays of the officers. § 87(2)(b) did not respond to the letters.

Civilians Not Interviewed

§ 87(2)(b) was not aware of any civilian witnesses and stated that all of the stores near which the incident occurred were closed at the time of the incident.

Officers Interviewed

Officer Jerome McGraw, formerly of the 120th Precinct and now of the Staten Island Task Force, was interviewed at the CCRB on May 7, 2007 (encl. 18a-b). Officer McGraw is a 6'1", 230 pound black male with black hair and brown eyes who is thirty seven years old. On February 20, 2007, Officer McGraw worked from 5:30 PM to 2:05 AM as part of the 120th Precinct SNEU team and was in unmarked van #8603 with Officer Ortiz, Officer Sepulveda, Officer Pedro, and Officer Nieves, which is documented in his memo book. Officer Ortiz was the operator. Officer McGraw did not have any memo book entries concerning the incident (encl. 15a-b). Officer McGraw completed a stop and frisk report in regards to his interaction with § 87(2)(b) (encl. 16a-b and 17a), which indicates that § 87(2)(b) was stopped at about 9:00 PM for four minutes near the intersection of Bay Street and Water Street, there was not a radio transmission regarding the stop, and that § 87(2)(b) was suspected of having controlled substances in his possession. Officer McGraw listed § 87(2)(b) as having made furtive movements and actions that were indicative of engaging in a drug transaction as reasons for the stop. It indicates that § 87(2)(b) provided a driver's license, other persons were not stopped, and that Officer McGraw explained the reason for the stop. Officer McGraw indicated on the report that he identified himself by showing his shield and verbally responding and that he was not in uniform. Officer McGraw indicated that § 87(2)(b) was frisked, but not searched, and that he was frisked because he made furtive movements. In the list of additional circumstances that led to the stop, Officer McGraw noted that the location has a high incidence of drug related activity. No physical force is listed as having been used. Sergeant Warshefskie reviewed the stop and frisk report. Officer McGraw's CCRB interview was consistent with the stop and frisk report and is condensed below.

Officer McGraw stated that they were driving on Bay Street and noticed that Sergeant Warshefskie and one other officer, whose name Officer McGraw did not recall, had stopped two males, § 87(2)(b) and § 87(2)(b) so they decided to assist him. Sergeant Warshefskie did not call the officers to the scene and Officer McGraw did not recall if Sergeant Warshefskie told the other officers why § 87(2)(b) and § 87(2)(b) were being stopped. Sergeant Warshefskie was standing a few feet in front of § 87(2)(b) and § 87(2)(b) and was having a loud exchange with them, though Officer McGraw did not recall how the exchange began or what it concerned. Officer McGraw interacted with § 87(2)(b)

but not with § 87(2)(b) and § 87(2)(b) was repeatedly putting his hands into different pockets despite being told by Officer McGraw and other officers to remain still. He said that the hand movements indicated that § 87(2)(b) may have had a weapon, as it was unusual for someone to move their hands in and out of pockets. Officer McGraw did not recall if § 87(2)(b) was wearing a jacket or if he had any items in his hands. § 87(2)(b) was “stating a lot of nonsense,” but Officer McGraw did not recall what or if § 87(2)(b) was asking the officers questions about the stop. Officer McGraw did not recall any physical interaction between himself and § 87(2)(b) stating that he didn’t recall frisking him or using any physical force and did not search either § 87(2)(b) or § 87(2)(b). He did not recall if any other officer frisked § 87(2)(b) and did not recall which other officers were positioned near § 87(2)(b) and which officers interacted with § 87(2)(b). Officer McGraw stated that both § 87(2)(b) and § 87(2)(b) were yelling at the officers during the stop, but he did not recall what they were saying.

Officer McGraw stated that he did not complete a stop and frisk report in regards to the incident until shown the stop and frisk report, which acknowledged he completed. In explaining why he indicated that § 87(2)(b) made movements indicative of being involved in a drug transaction, Officer McGraw stated that the area is a high drug prone location, particularly the corners of Bay Street and Water Street, but he didn’t recall if any movements specific to § 87(2)(b) were indicative of being involved in a drug transaction. The stop and frisk report indicates that § 87(2)(b) provided identification to the officers, but Officer McGraw did not recall if § 87(2)(b)’s wallet was taken from him or if he gave it to the officers. When asked if § 87(2)(b) had a beige colored substance in a plastic bag, Officer McGraw stated that he did and that the officers somehow obtained it, but he was not sure if the officers removed it from § 87(2)(b)’s person or if he gave it to the officers. He did not recall § 87(2)(b)’s pants falling to the ground at any point.

Officer McGraw did not recall seeing any officer frisk or search § 87(2)(b). Officer McGraw did not recall if § 87(2)(b) or § 87(2)(b) asking for any of the officers’ names or shield numbers during the incident and Officer McGraw had his shield displayed on the exterior of his clothing. He said that he did not shove either § 87(2)(b) or § 87(2)(b) or use discourteous language during the incident and didn’t see any one else do so. Officer McGraw stated that he has been involved in numerous arrests at the location related to drug activity. Officer McGraw had not interacted and was not familiar with either § 87(2)(b) or § 87(2)(b). He did not know why a stop and frisk report was not completed for § 87(2)(b) stating that he completed a stop and frisk report of his volition and was not ordered by Sergeant Warshefskie to do so.

Officer Manuel Sepulveda of the 120th Precinct was interviewed at the CCRB on June 5, 2007 (encl. 20a-b). Officer Sepulveda is a § 87(2)(b). On February 20, 2007, Officer Sepulveda worked from 5:30 PM to 2:05 AM as part of the 120th Precinct SNEU team and did not note with whom he worked or recall all of the officers who worked on the SNEU team on that date. He did not have any memo book entries concerning the incident or know what vehicle they used (encl. 19a-b). Officer Sepulveda’s statement was somewhat consistent with that of Officer McGraw and is condensed below.

Officer Sepulveda did not recall the stop at first and was not familiar with either § 87(2)(b) or § 87(2)(b) but when asked if recalled any stops during which an individual had a beige grain-like substance in a clear plastic bag, Officer Sepulveda stated that he was working with Officer McGraw and they saw § 87(2)(b) and § 87(2)(b) pass something between one another and continue walking as the officers were positioned about two car lengths away behind them. § 87(2)(b) took the object and looked at the officers in the van as he continued walking. He did not see currency being exchanged. There was nothing suspicious about § 87(2)(b) and § 87(2)(b) besides that exchange. Officer McGraw and Officer Sepulveda watched § 87(2)(b) and § 87(2)(b) walk for about five minutes and then stopped them. Officer Sepulveda and Officer McGraw interacted with § 87(2)(b) and asked him numerous times what was in his hands, which were at his sides and the object was in one of his hands, and § 87(2)(b) at first did not provide the object. After the officers asked him numerous times what was in his hands, § 87(2)(b) provided the object, which he said was some sort of spiritual charm, to Officer Sepulveda. At one point in the interview Officer Sepulveda stated that the object had been in one of § 87(2)(b)’s pants pockets. The object was a clear bag containing a sandy white substance. Officer McGraw and Officer Sepulveda determined that it was not narcotics without opening the bag, as § 87(2)(b) told him not to open it. § 87(2)(b) cursed at the officers and questioned why he was being stopped and Officer Sepulveda told him that they wanted to know what was in his hands because it looked as if he had been

exchanging narcotics. Officer McGraw frisked § 87(2)(b)'s pants to assure that he did not have any weapons, though he was not aware of any bulges that § 87(2)(b) had. § 87(2)(b)'s wallet was not obtained during the stop. Officer Sepulveda did not physically interact with § 87(2)(b) and did not interact with § 87(2)(b) at any point or see any of the interaction between officers and § 87(2)(b). Besides Officer McGraw frisking § 87(2)(b)'s pants, Officer Sepulveda did not see any physical interaction between officers and § 87(2)(b) and § 87(2)(b). He did not recall § 87(2)(b)'s pants falling down. Officer Sepulveda said that § 87(2)(b) did not ask for his name or shield number, but he may have asked for other officers' names and shield numbers.

Officer Sepulveda stated that Sergeant Warshefskie always attends the stops that the SNEU team makes, but he was not sure how many other officers were on scene or what other officers were on scene. Officer Sepulveda stated that Bay Street and Water Street is a drug prone location near which there is a methadone clinic and dance club at which drug dealers sell narcotics.

Officer James Pedro of the 120th Precinct was interviewed at the CCRB on July 30, 2007 (encl. 27a-b). Officer Pedro is a § 87(2)(b).

On February 20, 2007, Officer Pedro worked from 5:30 PM to 2:05 AM as part of the 120th Precinct SNEU team with Officer Ortiz, Officer McGraw, and Sergeant Warshefskie, all of whom were in an unmarked black van the number of which Officer Pedro did not know. There may have been other officers in the van, but Sergeant Warshefskie was sitting in the passenger seat, Officer Ortiz was driving, Officer Pedro was sitting behind the driver, and Officer McGraw was sitting behind Sergeant Warshefskie. In his memo book (encl. 26a-c), Officer Pedro noted at 9:23 PM that they stopped one male black in front of Barry's Pizzeria on Bay Street. The male refused to provide information and identification and one UF 250 was prepared. Officer Pedro's statement was somewhat consistent with that of Officer McGraw and Officer Sepulveda and is condensed below.

Officer Pedro stated that the officers were driving in patrolling the vicinity of Bay Street and Water Street looking for people to stop who may have information regarding two bank robberies in the area that happened two weeks prior to the incident. While driving on Bay Street, Officer McGraw saw § 87(2)(b) and § 87(2)(b) pass something to one another while they were walking. Officer Pedro did not know where the van was positioned in relation to § 87(2)(b) and § 87(2)(b) when Officer McGraw observed the transaction or which of them passed and which of them received the object, as he did not see the transaction. Officer McGraw announced this transaction to the other officers in the van and Officer Ortiz stopped the van near them. Officer Pedro stood next to one of the individuals, § 87(2)(b) and Officer McGraw stood next to the other, § 87(2)(b). Officer Pedro asked for identification from § 87(2)(b) and he said that he did not have to provide identification. Officer McGraw informed § 87(2)(b) and § 87(2)(b) that he had seen a transaction and would like to know what was exchanged. § 87(2)(b) and § 87(2)(b) said that they did not have any drugs on them and nothing had been exchanged. Officer Pedro could not recall what sorts of other questions were asked. § 87(2)(b) refused to tell Officer Pedro where he had come from and § 87(2)(b) showed the officers that he had a "little bag" that had to do with religious practices that he had passed to § 87(2)(b). Officer McGraw asked § 87(2)(b) and § 87(2)(b) about the bank robberies, but they did not answer the questions.

Officer Pedro stated that § 87(2)(b) was not frisked or searched by any of the officers and he did not recall seeing § 87(2)(b) being frisked or searched and there was not any physical interaction with the individuals. Either § 87(2)(b) or § 87(2)(b) Officer Pedro could not recall which, asked Sergeant Warshefskie and Officer Pedro for their names and shield numbers and Sergeant Warshefskie and Officer Pedro verbally informed them of their names and shield numbers. Officer Pedro's shield was displayed over his clothing. He did not recall § 87(2)(b)'s pants falling down.

Sergeant Robert Warshefskie of the 120th Precinct was interviewed at the CCRB on June 5, 2007 (encl. 22a-b). Sergeant Warshefskie is a § 87(2)(b). On February 20, 2007, Sergeant Warshefskie worked from 5:15 PM to 5:12 AM as the 120th Precinct SNEU team supervisor, but was not sure what vehicle he used or with whom he was working. Sergeant Warshefskie did not have any memo book entries concerning the incident (encl. 21a-b), but he indicated that Officer Ortiz made an arrest at 1:20 AM.

Sergeant Warshefskie did not recall the incident at all and his memory was not refreshed by reviewing the stop and frisk report or looking at photographs of § 87(2)(b) and § 87(2)(b) with whom he was not familiar.

Officer Jessica Nieves of the 120th Precinct was interviewed at the CCRB on June 18, 2007 (encl. 24a-b). Officer Nieves is a § 87(2)(b). On February 20, 2007, Officer Nieves worked from 5:30 PM to 2:05 AM as part of the 120th Precinct SNEU team, but did not recall with whom she was working or what vehicle was used. Officer Nieves did not have any memo book entries concerning the incident (encl. 23a-b).

Officer Nieves did not recall the incident and was not familiar with either § 87(2)(b) or § 87(2)(b).

Officer Richard Ortiz of the 120th Precinct was interviewed at the CCRB on June 25, 2007 (encl. 25a-b). Officer Ortiz is a § 87(2)(b). On February 20, 2007, Officer Ortiz worked from 5:30 PM to 2:05 AM as part of the 120th Precinct SNEU team. He lost his memo book for the date of incident and did not recall with whom he worked or what vehicle they used.

Officer Ortiz did not recall the incident and was not familiar with either § 87(2)(b) or § 87(2)(b).

Communications Documents

A request for any SPRINT report concerning the time and location of the incident was returned as negative (encl. 39a).

The 120th Precinct resource log for February 20, 2007 (encl. 28a-f) does not indicate that any radio transmissions were related to the incident.

Police Documents

The 120th Precinct computer generated and handwritten stop and frisk logs for February 20, 2007 (encl. 29a and 30a) indicate that a stop and frisk report was filed in regards to the stop of § 87(2)(b) but not for § 87(2)(b) or any individuals who refused to provide identification information.

The 120th Precinct Vehicle Utilization Log for February 20, 2007 (encl. 31a) indicates that the SNEU team used unmarked van number 8603, but no other vehicles.

The 120th Precinct Movement Log for February 20, 2007 (encl. 32a) does not have any entries related to the SNEU team.

The 120th Precinct Command Log for February 20, 2007 (encl. 33a-e) does not have any entries related to this incident.

The 120th Precinct Roll Call for February 20, 2007 (encl. 34a-l) indicates that Sergeant Warshefskie was the supervisor of the SNEU team and Officer McGraw, Officer Nieves, Officer Pedro, and Officer Sepulveda were assigned to the SNEU team. Officer Ortiz was assigned to the 2nd Tour.

A BADS list of individuals arrested in the 120th Precinct on February 20, 2007 (encl. 35a-b) indicates that no one was arrested during the incident.

§ 87(2)(b)

Subject Officer CCRB History

Sergeant Warshefskie has been with the NYPD for nineteen years and has not been the subject of any substantiated CCRB allegations (encl. 3a-b). Officer McGraw has been with the NYPD for seven years and has not been the subject of any substantiated CCRB allegations (encl. 4a). Officer James Pedro has been with the NYPD for two years and has not been the subject of any substantiated CCRB allegations.

(encl. 5a). Officer Nieves has been with the NYPD for four years and has not been the subject of any substantiated CCRB allegations (encl. 6a). Officer Manuel Sepulveda has been with the NYPD for six years and has not been the subject of any substantiated CCRB allegations (encl. 7a).

Complainant CCRB History

§ 87(2)(b) and § 87(2)(b) have not filed any other complaints with the CCRB (encl. 8a and 9a).

Notice of Claim

On October 10, 2007, § 87(2)(b) of the NYC Office of the Comptroller confirmed that neither § 87(2)(b) nor § 87(2)(b) has filed a notice of claim concerning the incident.

Conclusions and Recommendations

Officer Identification

§ 87(2)(b) and § 87(2)(b) stated that they were stopped by five officers and § 87(2)(b) obtained Sergeant Warshefskie's shield number during the incident, consistently stating that he did so as Sergeant Warshefskie was standing in front of and interacting with him. Officer Pedro stated that Sergeant Warshefskie was in the unmarked van with the other SNEU officers involved in the incident and Sergeant Warshefskie is listed on the roll call as having been the SNEU team supervisor on February 20, 2007. The vehicle utilization log indicates that only one vehicle, an unmarked van, was used by the SNEU team on February 20, 2007. Additionally, § 87(2)(b) described Sergeant Warshefskie as a white or Hispanic male, 5'7", 160-170 pounds, in his late twenties to early thirties and Sergeant Warshefskie is a 5'11", 195 pound, white male with brown hair and brown eyes who is § 87(2)(b) years old. Thus, his description is consistent with Sergeant Warshefskie's physical features. § 87(2)(b) said that Sergeant Warshefskie frisked and searched him and did not provide identification when asked. On such basis, allegations A, B, E, F, and L have been pled against Sergeant Warshefskie.

§ 87(2)(b) stated that two other officers approached him as well and he described one as a 5'2" to 5'3", 135 pound white or Hispanic female. § 87(2)(b) described a slim white or Hispanic female in her early twenties who is about 5'1" as having been involved in the incident. Officer Nieves is a 5'3", 130 pound light skinned Hispanic female with brown hair and brown eyes who is § 87(2)(b) years old. Her physical features are consistent with the description provided by § 87(2)(b) and § 87(2)(b). She is the only female officer who was working on the 120th Precinct SNEU team on February 20, 2007. Based on the descriptions provided by § 87(2)(b) and § 87(2)(b) and the fact that Officer Nieves was the only female officer on the SNEU team, and § 87(2)(b) asked her for identification information, allegation C has been pled against Officer Nieves.

§ 87(2)(b) described the third officer who approached him as a white or Hispanic male, 176 to 180 pounds, 5'9", and in his late thirties. Officer Pedro stated that he interacted with the individual who did not have the religious charm, which is § 87(2)(b). Officer Pedro is a 5'5", 190 pound, light skinned black male with brown hair and hazel eyes who is § 87(2)(b) years old. While § 87(2)(b)'s description of Officer Pedro is only partially consistent with Officer Pedro's physical features, based on the fact that Officer Pedro recalled interacting with § 87(2)(b) and acknowledged that he asked him for identification information, allegation D has been pled against Officer Pedro.

§ 87(2)(b) described interacting with two officers, the first of which he described as a thirty year old light skinned black male who is about 5'9" to 6'0" tall. Officer McGraw is a 6'1", 230 pound light skinned black male with black hair and brown eyes who is § 87(2)(b) years old and thus his physical features are consistent with the description provided by § 87(2)(b). Officer McGraw acknowledged that he interacted with § 87(2)(b) and completed a stop and frisk report in regards to his interaction with him. § 87(2)(b) said that Officer McGraw frisked and searched him and did not provide identification information when asked. Therefore, allegations H, I, and J have been pled against Officer McGraw.

§ 87(2)(b) described the second officer with whom he interacted as a thin white male who is about 5'4". Officer Sepulveda is a 5'10", 175 pound, light skinned Hispanic male with black hair and brown eyes who is thirty two years old and thus his physical features are not consistent with those provided by § 87(2)(b). Officer Sepulveda stated that he interacted with § 87(2)(b) along with Officer McGraw.

§ 87(2)(b), § 87(2)(g)

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Allegation A: Sergeant Robert Warshefskie supervised the stop of § 87(2)(b) and § 87(2)(b)

[REDACTED] and § 87(2)(b) stated that they were stopped by Sergeant Warshefskie, Officer McGraw, Officer Nieves, Officer Sepulveda, and Officer Pedro. Sergeant Warshefskie was the supervisor at the scene. § 87(2)(b), § 87(2)(g)

[REDACTED]. While Officer Sepulveda and Officer Pedro stated that the officers asked § 87(2)(b) and § 87(2)(b) about an exchange that had occurred, § 87(2)(b) and § 87(2)(b) stated that the officers used force in conducting the stop and asked them if they had any weapons or drugs. None of the officers recalled physical force being used. The NYPD Street Encounters: Legal Issues guide (encl. 2a) states that officers must have “a founded suspicion that

criminality is afoot” in order to stop and question individuals about particular crimes. It further states that force may not be used to conduct the stop and the individuals are free to walk away and do not have to answer any questions. § 87(2)(b), § 87(2)(g)

Allegation B: Sergeant Robert Warshefskie refused to provide his name and/or shield number to

§ 87(2)(b)

Allegation C: Officer Jessica Nieves refused to provide her name and/or shield number to § 87(2)(b)

Allegation D: Officer James Pedro refused to provide his name and/or shield number to § 87(2)(b)

Allegation G: Officer Manuel Sepulveda refused to provide his name and/or shield number to § 87(2)

and § 87(2)(b)

Allegation H: Officer Jerome McGraw refused to provide his name and/or shield number to § 87(2)

and § 87(2)(b)

§ 87(2)(b) and § 87(2)(b) both said that they asked the officers for identification information numerous times during the incident and the officers did not provide identification information. Officer Pedro said that either § 87(2)(b) or § 87(2)(b) asked him and Sergeant Warshefskie for their names and shield numbers and they provided the information verbally. Officer McGraw and Officer Sepulveda did not recall if they were asked for identification information. § 87(2)(b), § 87(2)(g)

Allegation E: Sergeant Robert Warshefskie frisked § 87(2)(b)

Allegation F: Sergeant Robert Warshefskie searched § 87(2)(b)

§ 87(2)(b) said that Sergeant Warshefskie frisked and searched him. Sergeant Warshefskie did not recall the incident and § 87(2)(b) did not see § 87(2)(b)'s interaction with Sergeant Warshefskie. Officer Pedro stated that § 87(2)(b) was not frisked or searched and did not recall all of the details of the interaction. § 87(2)(b), § 87(2)(g)

Allegation I: Officer Jerome McGraw frisked § 87(2)(b)

§ 87(2)(b) said that Officer McGraw frisked him after Officer McGraw took § 87(2)(b)'s hands out of his pockets because he did not take his hands out himself. Officer McGraw did not recall frisking § 87(2)(b) but noted that he did so in the stop and frisk report and said that § 87(2)(b) repeatedly put his hands in and out of his pockets after being told to remain still. This indicated to Officer McGraw that § 87(2)(b) may have had a weapon, as it was unusual behavior. Officer Sepulveda said that Officer McGraw frisked § 87(2)(b) around his pants pockets after § 87(2)(b) was told numerous times to take his hands out of his pockets and refused. § 87(2)(b), § 87(2)(g)

NYPD Patrol Guide Procedure 211-12 (encl. 1a-c) and the NYPD Street Encounters: Legal Issues guide (encl. 2a) both state that an officer needs to have “reasonable suspicion” that a person is committing a crime and may pose a danger to the officer. § 87(2)(g)

Allegation J: Officer Jerome McGraw searched § 87(2)(b)

§ 87(2)(b) stated that Officer McGraw searched him and § 87(2)(b) said that he saw Officer McGraw put his hands in § 87(2)(b)'s pants pockets. Officer McGraw said that he did not search § 87(2)(b) and Officer Sepulveda said that § 87(2)(b) was not searched by any officers. The stop and frisk report does not indicate that § 87(2)(b) was searched. § 87(2)(g)

§ 87(2)(b)

Allegation K: An officer spoke obscenely and/or rudely to § 87(2)(b)

§ 87(2)(b) said that an officer at the scene said “smart ass” in reference to him during the incident. He was not sure who made the remark and Officer Pedro, Officer Sepulveda, and Officer McGraw, the only officers who recalled the incident, said that they did not recall hearing any officer make a discourteous remark. § 87(2)(b) did not pay attention to § 87(2)(b)'s interaction with the officers and did not repeat the discourteous statement. § 87(2)(b), § 87(2)(g)

§ 87(2)(b)

§ 87(4-b), § 87(2)(g)

§ 87(2)(b)

§ 87(2)(b)

Investigator:

Date:

Supervisor:

Date:

Reviewed by:

Date:

Reviewed by:

Date: